(13)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

NO. 400

J. L. WILKEY AND J. L. WILKEY ADJUSTER, INC., a Corporation,

Petitioners,

vs.

STATE OF ALABAMA EX REL., JIM C. SMITH AND JIM C. SMITH

Respondents.

(6TH DIV. 970
ALABAMA SUPREME COURT)

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA.

OPPOSING BRIEF

OF

WILLIAM MARVIN WOODALL
AND
FRANCIS H. HARE,
Counsel for Respondents.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

NO. 400

J. L. WILKEY AND J. L. WILKEY ADJUSTER, INC., a Corporation,

Petitioners.

vs.

STATE OF ALABAMA EX REL., JIM C. SMITH AND JIM C. SMITH

Respondents.

(6TH DIV. 970
ALABAMA SUPREME COURT)

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA.

SUBJECT INDEX

RESPONDENTS' OPPOSING BRIEF:

AUTHORITIES AND CASES CITED

Pages

A. CASES INVOLVED:

I

May it Please the Court:

A

SUMMARY STATEMENT OF THE MATTER INVOLVED

Correcting inaccuracies or omissions in the statement of the other side, Petitioners in this proceeding. Supreme Court Rule 27 (4).

Respondents duly instituted in the Circuit Court of Jefferson County, Alabama, on *September 21, 1937*, proceedings on information or petition *in the nature of quo warranto* against the Petitioners, now, who seek writ of Certiorari ~~warranto~~ from Supreme Court of the United States to Supreme Court of Alabama, in the case there decided May 13, 1943, and rehearing denied June 30, 1943, affirming the judgment of the Circuit Court in favor of the Plaintiffs therein. *Wilkey et al vs. State ex rel Smith, 6 Div. 970, Supreme Court of Alabama, 14 So. 2d, page 536.* Tr. of Rec. 210-231.

The Act of the Legislature of Alabama, involved in this Certiorari proceedings, and as construed by the Supreme Court of Alabama in the case cited, was approved, and became effective, on July 20, 1931, *General Acts Alabama 1931, page 606, which defines and regulates the practice of law and requires a license for practicing law.*

Said Act was codified in the Code of Alabama of 1940 as Section 42 of Title 46, entitled: "Who May Practice As Attorneys," omitting the title and the enacting clause, and sections following Section 3 of the original Act. Since the original proceedings in this case were instituted under said original Act and before the Code of 1940, we quote the title and the enacting clause and pertinent parts of said original Act, as presently involved in this litigation viz:

"AN ACT

"*To further regulate the practice of law;* providing who may practice law; *defining the practice of law; requiring a license for practicing law;* and providing penalties for violations of the Act.

"Be it Enacted by the Legislature of Alabama:

"Section 1. Only such persons as are regularly licensed have authority to practice law.

"Section 2. *For the purpose of this Act, the practice of law is defined as follows: Whoever,* (a) * * * * or (d) *As a vocation,* enforces, secures, settles, adjusts or compromises *defaulted, controverted or disputed* accounts, claims or demands *between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense; is Practicticing Law. Nothing in this section shall be construed to prohibit any person, firm or corporation from attending to and caring for his or its own business, claims or demands;* * * *

"Section 3. Any person, firm or corporation who is not a regularly licensed attorney who does an act defined in this Act to be an act of practicing law, is guilty of a misdemeanor, and on conviction must be punished as provided by law. And any person, firm or corporation who conspires with, or aids and abets, another person, firm or corporation in the commission of such misdemeanor must, on conviction, be punished as provided by law.

"Section 4. If any clause, section, division or portion of this Act shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, division or portion of this Act which is not itself unconstitutional." (Emphasis supplied).

The constitutionality of said original Act, as to both State and Federal Constitutions, was upheld by the Supreme Court of Alabama, *First:* As applied to an *"Independent Contractor,"*—one conducting commercial collection agency who was held to be engaged in "Practice of Law," as defined by this Act, and reported in the case of *Berk vs. State, 225 Ala. 324, 142 So. 832, 84 A. L. R. 740;* and the decision of which case was followed and applied on the first appeal in the present litigation—as to an *"Independent Contractor"*—persons conducting a *"vocation"* of *Independent Insurance Adjusters,* wherein the court held as shown by Headnote 4 thereof, as follows:

"4. Quo warranto Key 50 (1).

"In quo warranto proceedings charging respondents with practicing law without license, special plea of respondents that respondents were not employees of casualty and fire insurance companies 'in ordinary sense,' nor 'in privity' with such companies but were engaged in insurance adjustment business representing regular clientele, showed that their acts of settting claims for such companies constituted 'practice of law' prohibited by statute. Code 1923, Sec. 9932, par. 1; Gen. Acts 1931, p. 606.

"To be in 'privity' to another, a man must claim by or under that other, by blood, as heir, by representation, as executor, or by contract, as vendee, assignee, and the like."

Wilkey et al vs. State ex rel Smith, 238 Ala. 121, 189 So. 198.

The decision of the Alabama Supreme Court in the *Berk Case, supra,* was then adhered to in the case of *Bessemer Bar Association vs. Fitzpatrick, 239 Ala. 663, 196 So. 733,* as applied to an *"Independent Contractor"*—one appearing in court and acting as an Attorney at Law in proceedings in court, but one not licensed to practice, wherein the court said:

"We adhere to the decision rendered in Berk v. State ex rel. Thompson, 225 Ala. 324, 142 So. 832, 84 A. L. R. 740, defining the practice of the law in and out of court." (Emphasis supplied).

Then, the decision of the Alabama Supreme Court in the *Berk case, supra,* was again upheld and applied by the Supreme Court of Alabama on the last appeal in the present litigation, as applied to *"Independent Contractors"*—persons conducting a *"vocation"* of *Independent Insurance Adjusters,* wherein the court held as follows:

"In 1931 the legislature re-enacted the 1927 act en haec verba (Act No. 493, H. 606, *approved July 20, 1931, General Acts 1931, page 606). This latter act*

was held constitutional in the case of Berk v. State ex rel. Thompson, 225 Ala. 324, 142 So. 832, 837, 84 A. L. R. 740, from which case we quote as follows: 'It is well established that the act in question (Gen. Acts 1931, p. 606) is a valid enactment under the police power, and offends neither state nor Federal Constitution; is not usurpation of judicial power; does not deprive of liberty or property without due process; neither denies to citizens equal civil rights, nor grants special privileges and immunities; does not violate, impair, or deny rights retained by the people, and does not violate the Fourteenth Amendment to the Federal Constitution'." (Emphasis supplied).

HEADNOTES

"7. Attorney and client Key 11:

"*The statute providing that one who as a vocation* enforces, secures, settles, adjusts, or compromises *defaulted, controverted, or disputed* accounts, claims, or demands *between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense* is 'practicing law,' *is not confined to insurance disputes, but is broad enough to include them and should be so interpreted.* Code 1940, Tit. 46, Sec. 42 (d)."

* * *

"9. Attorney and client Key 11:

"After a default, dispute, or controversy has arisen, the independent lay adjuster must step aside, for then the law declares that the further adjustment or litigation must be handled by a regularly licensed lawyer. Code 1940, Tit. 46, Sec. 42 (d)."

"ON REHEARING

"27. Constitutional law Key 212:

"The 'equal protection of the law' clause of the Fourteenth Amendment *does not take from the state the power to classify in the adoption of police laws, but admits of the*

exercise of a wide scope of discretion in that regard and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. U. S. C. A. Const. Amend. 14."

"31. Attorney and client Key 1, 11;

Constitutional law Key 238 (1) :

"*Under the statute one who adjusts* a defaulted, controverted, or disputed account, claim, or demand *between persons with either of whom he is in privity or with whom he stands in the relation of employer and employee in the ordinary sense, is not engaged in 'practicing law,' and the statute so construed is not unconstitutional as depriving an independent insurance adjuster of 'equal protection of the law.'* Code 1940, Tit. 46, Sec. 42 (d) ; U. S. C. A. Const. Amend. 14." (Emphasis supplied) .

Wilkey et al v. State ex rel Smith, 6 Div. 970 (Supreme Court of Alabama), 14 So. Rep. 2d, 536

The Brief of Petitioners in the case at Bar, in stating "A Summary of the Facts," quotes, on pages 6 to 13, from the opinion of the Supreme Court of Alabama in this case reported in *14 So. 2d, 536,* and which opinion in full is stated to be shown fully in: " 'A' in Appendix hereto."

On page 8 of the Petitioners' Brief, at the end of the first paragraph, an omission is shown. We now supply that omission. (See Brief pp. 26, 27; 14 So. 2d, page 541) :

> "The record is not in all respects clear as to the procedure and practice customarily followed by respondents in investigating, adjusting and settling claims. The scope of respondents' activity and authority seems to have depended on the type of claim investigated and in some instances it is not clear as to which type of claim the evidence as to the procedure and practice employed by respondents related." Tr. of Rec. 215.

On page 9 of the Petitioners' Brief in paragraph numbered: " (c) Automobile Collision Claims," an omission is shown. We now supply that omission. (See Brief p. 29; 14 So. 2d, page 542) :

"It appears, however, that in at least one instance the respondents determined the amount of the payment after taking into consideration the deductible features in the contract of insurance. *In some instances respondents notified insurance companies and individuals as to their subrogation rights and had claimants execute lien subrogation papers. Payment was made to claimant by the insurance company.*" (Emphasis supplied). Tr. of Rec. 217.

In addition, we quote paragraphs 18 and 19 of the opinion of the Supreme Court of Alabama, 14 So. 2d, page 547, and in Petitioners' Brief, page 45, viz:

"(18, 19): An independent lay insurance adjuster may not advise or recommend that insurance companies have subrogation or contribution claims against other insurance companies or individuals, as such action involves the giving of legal advice and constitutes the practice of law. The evidence shows that one Robinson and one Kelly were involved in an automobile collision. Robinson was covered by collision insurance carried by the Home Insurance Company, represented by appellants. The Home Insurance Company paid the claim filed by Robinson, *whereupon respondents notified Kelly and his counsel or counsel for his insurance carrier that the Home Insurance Company had paid the claim and were holding subrogation rights and advised that any settlement made should subrogate the equity of the Home Insurance Company on account of their expenditure. We think this action on the part of appellants constituted the practice of law.*" (Emphasis supplied). Tr. of Rec. 228.

On page 11 of the Petitioners' Brief, at the end of the first paragraph, an omission is shown. We now supply that omission. (See Brief p. 31; 14 So. 2d, page 542):

"On one occasion it appears that respondents, after the claimant had refused the amount offered him, recommended to the insurance company that the payment be increased. In connection with this same mat-

ter the respondent Wilkey advised the claimant that he could not enter suit on behalf of his wife to recover for the losses sustained by her as a result of her absence from work while caring for claimant.

"On another occasion after the claimant refused to accept the amount offered, the respondents continued to handle the matter and finally drew a draft on the insurance company for an increased amount in accordance with the company's authorization." Tr. of Rec. 218.

On page 13 of the Petitioners' Brief, the second paragraph ends with a part of the quotation from the Supreme Court opinion, reading: "The appellants, unquestionably, should be classed as 'independent insurance adjusters,' * * * *." We now supply the omission, and quote the whole sentence of the Supreme Court of Alabama, (See Brief p. 33; 14 So. 2d, page 543), as follows:

> "(1) The appellants, unquestionably, should be classed as 'independent insurance adjusters,' but the decision here cannot be predicted in all of its phases on the Wisconsin case, supra, *for the reason that our statute defining the practice of law is in most respects different from the Wisconsin statute relating thereto.*" (Emphasis supplied). Tr. of Rec. 220.

In addition, we quote the following two paragraphs from the opinion of the Supreme Court of Alabama, appearing on page *546* of 14 Southern Reporter, 2d Series; and in Petitioners' Brief pages 42 and 43, viz:

> "We think it may well be assumed that there are many negotiations and inquiries after a loss by and between insured and the company for which independent lay adjusters are well qualified to perform. That is their specialized field of activity in which they have been found to be duly qualified to serve. *The lawyer must come into an adjustment as soon as a controversy or dispute arises or a default occurs. Any sort of controversy or dispute is the statutory line of demarcation.* Tr. of Rec. 226.

> *"We must determine,* therefore, as to *whether or not the facts in this case show that the appellants have been engaged in enforcing, securing, settling, adjusting or compromising defaulted, controverted or disputed accounts, claims or demands, as* distinguished from claims or demands which have not reached the stage of a default, controversy or dispute." Tr. of Rec. 226, 227.

NOTICE: On page 56 of Petitioners' Brief, appears the following paragraph:

> "Each type of adjuster is licensed by the State of Alabama (Section 455, Title 51, Code of Alabama 1940) and is entitled to the equal protection of its laws."

This statement is erroneous, because that Section of the Code of Alabama provides—in effect—*that the license tax shall not apply to "an employee in the ordinary sense"* of an insurance company; and as said Section has been so construed by the Attorney General of Alabama, as noted under said Section in the Alabama Code of 1940. We quote that Section in full, *together with the notation thereunder of the Attorney General's ruling:*

> "Sec. 455. Adjusters of fire, automobile, etc., insurance. Each adjuster of fire, automobile, property damage, collision liability or other losses, twenty-five dollars to the state, but no license shall be paid to the county. If such business is conducted as a firm or as a corporation in which more than one person is engaged, each person so engaged shall pay the license provided for herein. The license paid in one county shall not be required to be paid in any other county in the state. *Provided that this license tax shall not apply to any local insurance agent who adjusts losses for the insurance company which he regularly represents. (Ib)." (1935, p. 442, Section 348, Schedule 5).*
>
> "A person not a regularly licensed attorney cannot become entitled as a matter of right *to engage in the business* of enforcing, settling, adjusting or comprom-

ising claims based on contracts or policies of insurance between persons with either of whom he is in privity in the relation of employer and employee in the usual sense by virtue merely of taking out and paying for a license under this section. Rep. Atty. Gen. 1936-38, p. 56." (Emphasis supplied).

ATTENTION!

The word "either" in the expression "with either of whom," appearing (supra) in the notation to the above Section, 455, of the Alabama Code of 1940, as being taken from the report of the Attorney General of Alabama 1936-38, p. 56, is erroneously used by the Annotator of the Code; whereas, the word "neither" should have been used instead.

To make this point clear beyond doubt, we quote the address and Propositions of Law stated in said report of the Attorney General, as found in *Biennial Report Attorney General Alabama, October 1, 1936-September 30, 1938, page 56,* as follows:

"December 5, 1936

"Hon. Eugene B. Henry,
Commissioner of Licenses,
Birmingham, Alabama.

"Practice of Law—

"1. A person not a regularly licensed attorney cannot become entitled as a matter of right to engage in the business of enforcing, settling, adjusting or compromising claims based on contracts or policies of insurance between persons with neither of whom he is in privity in the relation of employer and employee in the usual sense by virtue merely of taking out and paying for a license under General Acts, 1935, page 442, Schedule 5.

"2. Such statute, insofar as it might purport to grant any such right to other than a regularly licensed attorney at law would be unconstitutional as invasive of the powers of the judicial department.

"3. A person who is not a regularly licensed Attorney who engages in such action is subject to the penal-

ties provided in General Acts, 1931, p. 606 and other appropriate preventive action by the Courts.

"4. Such action in fact constituting the practice of law, a corporation, firm or other artificial creation cannot lawfully engage therein in any event.

Opinion by
Attorney General Carmichael."

* * *

PETITIONERS SPEAK FOR THEMSELVES AS TO THEIR VAST "INDEPENDENT CONTRACTOR" BUSINESS INVOLVED

We quote in this regard, from Plaintiffs' Exhibit "4-d" Transcript in the Supreme Court of Alabama in this case, at pages 205 and 206, omitting the map of Alabama thereto attached, as follows: (Tr. of Rec. 196 A. B.).

"Established 1928

HOME OFFICE
J. L. WILKEY ADJUSTER, INC.
WATTS BUILDING
BIRMINGHAM, ALABAMA

—o—

BRANCH OFFICES

J. L. WILKEY ADJUSTER, INC.
WILSON BUILDING
ANNISTON, ALABAMA

J. L. WILKEY ADJUSTER, INC.
EYSTER BUILDING
DECATUR, ALABAMA

Charter Member

NATIONAL ASSOCIATION INDEPENDENT INSURANCE ADJUSTERS

—o—

Please refer to page two for history of business, and to MAP on page three for territory covered by each office."

Tr. p. 206:

"BIRMINGHAM OFFICE

"J. L. Wilkey, age forty-two, who has had twenty years experience, principally in Birmingham and North Alabama, owns the business and is in direct charge of this office. He spends all of his time here except one day each week which is spent in one or the other of the branch offices. We have five adjusters and three stenographers, and our well equipped offices are in the City's most modern office building.

"ANNISTON OFFICE

"Neal E. Sellers, Jr., age twenty-seven, who has lived in Anniston practically all of his life, and has had several years' experience in the handling of claims, is in direct charge of this office; which was opened January 1st, 1937, to give better service at less cost to the companies represented.

"DECATUR OFFICE

"Chas. G. Hardwick, Jr., age twenty-eight, who has lived in Decatur all of his life, and has worked in law and claim offices for several years, is in direct charge of this office; which was opened on January 1st, 1935, and has well justified its existence by giving our clients better service at less cost.

* * *

"The owner welcomes investigation as to character, integrity and ability among the large number of in-

surance companies represented, any bank or business concern, the Birmingham Chamber of Commerce, or any outstanding law firm in Birmingham or North Alabama.

"He assisted in organizing the Birmingham Claim Association in 1934, and has served continuously as its President. In the same year he led in the organization of the Alabama Information Bureau, maintained in our offices by some thirty claim departments, the records of which are available, without charge, to all companies we represent.

He called a meeting of business and professional men in 1935, out of which was organized the Anti-Racketeering Bureau of the Chamber of Commerce, on which committee he has served continuously, resulting in inestimable value to defendants.

"Since opening our Birmingham office of July 1st, 1928, we have handled over eleven thousand cases for a large number of insurance companies, to the general satisfaction of all concerned.

"Our branch offices were not opened with the idea of taking in more territory, but to have a local man in the center of the area covered to handled claims promptly, and with less time and out of town expense."

* * *

B

"ERRONEOUS REASONS" RELIED ON BY PETITIONERS FOR THE ALLOWANCE OF THE SOUGHT FOR WRIT OF CERTIORARI.

The Supreme Court of Alabama, *in the case at bar, has not* decided a federal question of substance in conflict with applicable decisions of the Supreme Court of the United States, including those cases cited on page *15* of the *Petition and Brief* of Petitioners herein; nor contrary to the principles of law established by the Supreme Court of the United States in said cases cited, *the statement of Petitioners to the contrary notwithstanding!*

Nor do Petitioners state any good or valid reason "for the allowance of the writ," or any special and important reasons for a review on Writ of Certiorari to the Supreme Court of Alabama in said cause!

The *said Statute of Alabama,* as construed by the Supreme Court of Alabama, *is a valid "police law" of said state,* not offending nor in violation of the 14th Amendment to the Constitution of the United States, *as applied to the "Vocation" of the Petitioners as Independent Insurance Adjusters,* viz: *"Independent Contractors,"* contrasted with *"employees in the ordinary sense"* of insurance company functioning, *involved in an Act, defining and regulating the practice of law for the public welfare!*

RESPONDENTS' OPPOSING BRIEF

PROPOSITIONS OF LAW

I

The right to practice law is not a privilege or immunity granted to all citizens of the United States. But, *it is a franchise* from the State conferred only for merit; *and is not a lawful business, except* for Members of the Bar who have complied with all the conditions required by Statute and Rules of the Court, *and such regulation is no violation of the Federal Constitution.*

Ex Parte Garland, 71 U. S. 333, 4 Wallace 333, 18 L. ed. 366.

In Re Lockwood, 154 U. S. 116, 14 S. Ct. 1082, 38 L. ed. 929.

Meunier v. Bernich, (La. App.), 170 So. 567.

State v. Rosborough, 152 La. 945, 94 So. 858.

In Re Dorsey, 7 Porter (Ala.) 295.

Berk v. State ex rel. Thompson, 225 Ala. 324, 142 So. 832., 84 A. L. R. 740, with Annotation: *"Making collections as practice of law."*

Wilkey et al. v. State ex rel. Smith, 238 Ala. 121, *189 So. 198.*

Bessemer Bar Association v. Fitzpatrick, 239 Ala. 663, *196 So. 733.*

Birmingham Bar Association v. Phillips and Marsh, 239 Ala. 650, *196 So. 725.*

Lehmann v. State Board of Public Accountancy, 208 Ala. 185, *94 So. 94.*

State of Oklahoma ex rel. Short, Atty. Gen. et al. v. Riedell et al. 109 Okla. 35, 233 Pac. 684, *42 A. L. R. 765.*

Wilkey et al. v. State ex rel. Smith, (Ala), *14 So. (2d) 536.*

II

The Supreme Court of Alabama—the highest Court of the State—while in the exercise of the sovereign judicial power of the State under its Constitution, *has the inherent power to define and regulate the practice of law, both in and out of Court,* in said State; and which power may be aided, *but not impinged,* by a valid enactment of the Legislature under the "police power."

Constitution of Ala. 1901, Sections 42, 43, 139, 140.

Berk v. State ex rel. Thompson, (supra).

Wilkey et al. v. State ex rel. Smith, both citations, (supra).

Bessemer Bar Association v. Fitzpatrick (supra).

Meunier v. Bernich, (supra).

Williams v. Knight, 233 Ala. 42, *169 So. 871.*

Re Integration of Nebraska State Bar Association, 275 N. W. 265, ... Nebraska ....., *114 A. L. R. 151.*

Ex parte Thompson, 228 Ala. 113, *152 So. 229,* 107 A. L. R. 671.

III

As a "Vocation," Independent Insurance Adjusters, whether claimant adjusters or defense adjusters, *are "Independent Contractors," and are not employees* "in the ordi-

nary sense," *nor are they "in privity"* with either of the other parties, while settling legal claims or demands of or against insurance companies represented by them.

J. L. Wilkey et al. v. State ex rel. Smith, 238 Ala. 121, 189 So. 198.

Milligan et al. v. Alabama Fertilizer Co., 89 Ala. 322, 7 So. 650.

Collum Motor Co. v. Anderson, 222 Ala. 643, 133 So. 693.

Lynch Jewelry Co. v. Bass, 220 Ala. 96, 124 So. 222.

Hoover v. Wise, 91 U. S. 308.

Bradstreet v. Everson, 72 Pa. St. 124.

Lewis v. Peck, 10 Ala. 142.

Rochester-Hall Drug Co. v. Bowden, 218 Ala. 242, 118 So. 674.

Allison-Russell Withington Co. v. Sommers, 219 Ala. 33, 121 So. 42.

Berk v. State ex rel. Thompson, 225 Ala. 324, 142 So. 832, 84 A. L. R. 740.

IV

The Statute of Alabama—entitled: "An Act to further regulate the practice of law; providing who may practice law; defining the practice of law; requiring a license for practicing law; and providing penalties for violations of the Act." *(Gen. Acts Ala. 1931 p. 606;* Codified in *Code Ala. 1940, Tit. 46, Section 42)*—as construed by the Supreme Court of Alabama *in the case at bar favorably* as to *"an employee in the ordinary sense,"* as against a *"Vocation"* of *"an Independent Insurance Adjuster,"* with respect to being engaged or not in *"practicing law"* within its provisions, *is a valid "police law"* of said State *in aid of the Supreme Court,* and does not offend or violate the 14th Amendment to the Federal Constitution as depriving the "Independent Insurance Adjuster" of "equal protection of the laws," or "due process."

Because: as applied to the *"Vocation"* of the *Petitioners* as Independent Insurance Adjusters, viz: *"Independent*

Contractors," contrasted with *"employees in the ordinary sense"* of insurance company functioning within the purview of the Act, *defining and regulating the practice of law for the public welfare: "the substantial difference in point of harmful result,* so far as the case as *made shown, may exist*—(when *"as soon as a controversy or dispute arises or a default occurs—any sort of controversy or dispute")—affords a reasonable basis, under the equal protection-of-the-laws clause of the Federal Constitution for exemption"* of the activity of the *"employee in the ordinary sense"* "from the operation of the provisions" of the Legislative Act.

Wilkey et al. v. State ex rel. Smith, 14 So. (2d) 536, 538, 546, 548, 549.

Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 31 S. Ct. 337, 340, *55 L. ed. 369, Ann. Cas. 1912 C. 160.*

Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L. ed. 729, 20 S. Ct. Rep. 578.

Bryce v. Gillespie, (Supreme Court of Appeals), *160 Va. 137, 168 S. E. 653.*

State v. Polakow's Realty Experts, Inc., et al, 243 Ala. 441, *10 So. (2d) 461.* (Court opinion per Gardner, Chief Justice).

State ex rel. Highsmith v. Brown-Service Funeral Co., 236 Ala. 249, *182 So. 18.*

(a) *The Petitioners* in their Brief, in the case at bar, *cite no authorities holding contrary to the foregoing proposition of law!*

ARGUMENT

POINT A

Subdivision (d) of Section 42, Title 46, Code of Alabama of 1940 as construed by the Supreme Court of Alabama, *does not* deny Independent Insurance Adjusters, and Petitioners as such, equal protection of the laws, and is *not* unconstitutional and void.

We quote pertinent parts of some of the decisions cited by us under the foregoing Propositions of Law:

Under Proposition of Law I:

In the cited case of *In Re Lockwood,* the Supreme Court of the United States, speaking through Mr. Chief Justice Fuller, held as shown by headnotes in 38 L. ed., page 929, as follows:

> "Right to practice law—not immunity of citizen—power of state court.
>
> "1. The refusal of the Supreme Court of Appeals of Virginia to admit the petitioner to practice law in that court on the ground that she is a woman, does not deny to her any privilege or immunity of a citizen of the United States.
>
> "2. The right to practice law in the state courts is not a privilege or immunity of a citizen of the United States.
>
> "3. It is for the state court to construe a statute of the state in regard to the admission of persons to practice law in its courts, and to determine whether the word 'person' therein used, is confined to men, or includes women."

In the cited case of *Ex Parte Garland,* the Supreme Court of the United States, speaking through Mr. Justice Field, said:

> "The attorney and counselor being, by the solemn judicial act of the Court, clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors, and

to argue causes, is something more than a mere indulgence, revocable at the pleasure of the Court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the Court, for moral and professional delinquency.

"The legislature may undoubtedly prescribe qualifications for the office, to which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary avocations of life." (Emphasis supplied).

Mr. Justice Miller, writing the dissenting opinion in that case for himself, and concurred in by Chief Justice Chase, and Justice Swayne and Davis, said:

"The right to practice law in the courts *as a profession, is a privilege* granted by the law, *under such limitations or conditions in each state or government as the law making power may prescribe. It is a privilege, and not an absolute right. The distinction may be illustrated by the difference between the right of a party to a suit in court to defend his own cause, and the right of another to appear and defend for him. The one, like the right to life, liberty and the pursuit of happiness, is inalienable. The other is the privilege conferred by law on a person who complies with the prescribed conditions.*

"Every state in the Union, and every civilized government, *has laws by which the right to practice in its courts may be granted, and makes that right to depend* on the good moral character and professional skill of the party *on whom the privilege is conferred."* (Emphasis supplied).

In the cited case of *Meunier v. Bernich,* the Court of Appeals of Louisiana said:

"Further, the right to practice law is not a privilege or immunity granted to all citizens of the United States. See In Re Lockwood, 154 U. S. 116, 14 S. Ct. 1082, 38 L. ed. 929. But it is a franchise from the state conferred only for merit and is not a lawful busi-

ness except for members of the bar who have complied with all the conditions required by statute and the rules of the court. See State v. Rosborough, 152 La. 945, 94 So. 858." (Page 572).

In the cited case of *Birmingham Bar Association v. Phillips and Marsh,* the Supreme Court of Alabama said:

"The legal profession, men learned in the law, licensed upon evidence of their attainments in a wide range of substantive and procedural law, and upon evidence of good character, *are invested with a franchise granted by the State.* One of the major functions of the lawyer is the giving of legal advice to the layman that he may conduct his business according to law. Wise men generally look to him to draft their difficult legal documents, or give needed advice as to their form and contents."

* * *

"But this is not the only method of invoking the authority of the State *in the protection of franchises it has granted in the interest of the public.*"

* * *

"The proceeding in the instant case is not to punish for past acts of the accused, *but to adjudicate that they are engaging in the practice of law, thus intruding into the field of the legal profession usurping a franchise granted to those duly licensed,* seeks to suppress such wrong, and restrain respondents by injunction from further engaging in such unlawful practice of the law.

"This is the precise objective of proceedings in the nature of quo warranto." (Emphasis supplied). (Pages 731 and 732).

In the cited case of *Berk v. State ex rel Thompson,* the Supreme Court of Alabama, *in dealing with said Statute of Alabama,* now involved in the case at bar, as it had application to an *"Independent Contractor,"* viz: A Commercial Collection Agency's certain activities, *as shown by the evidence in that case,* said:

"Under the facts alleged in the petition relative to the alleged business of defendant-appellant, was he, had he been, and did he propose 'to practice law' unlawfully without having the required license to engage in such practice? *Otherwise stated, the first question for decision is: Did the averred acts constitute* 'the practicing of law' per se?

"The act regulating and defining the practice of law, approved July 20, 1931, provides in part as follows:

'Section 1. Only such persons as are regularly licensed have authority to practice law.

*'Section 2. For the purposes of this Act, the practice of law is defined as follows: Whoever, (a) * * * or, (d) As a vocation,* enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands *between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense; is Practicing Law.*

"Gen. Acts 1931, p. 606.

This prescription or legislative definition of the words 'practicing law' is specific, its own interpreter, and unambiguous.

"We are not without decisions in this jurisdiction that shed light upon the question, or shorthand rendition of facts and definition thereof that are pertinent.

"It was decided in Gullett v. Lewis, 3 Stew. 23, 27, that: 'An attorney at law is the special agent of his client, whose duties, usually are confined to the vigilant prosecution or defense of the suitor's rights. *By virtue of his engagement as an attorney, he is not authorized to compromise the matter of controversy,* to execute a release of his client's demand, or even to release the responsibility of a witness to his client, that he may be rendered competent. *When a note is placed in the hands of an attorney at law to collect, the only power granted to him is to receive the money if the payor will pay it without, or to enforce its payment by suit.'*

"Analogy is contained in Kirk v. Glover, 5 Stew. & P. 340, *in the definition and declaration of the doctrine of special agency in an attorney to collect in money, his client's suit prosecuted to judgment; or to collect it*

without suit; or to collect the claim the basis of a suit out of court, as was the case in Cook and Lamkin v. Bloodgood, 7 Ala. 683.

"The case of Chapman, Lyon and Noyes v. Cowles, 41 Ala. 103, 108, 109, 91 Am. Dec. 508, *contains authorities collected and reviewed as to the general authority of an attorney in the collection of a claim of his client, saying, among other things:* 'In Clark and Co. v. Kingsland (1 Smedes & M. (Miss.) 248), the court says: *"It is the business of an attorney to collect the money on claims placed in his hands for collection, and his authority as an attorney,* extends no further." * * * It is also held, in the case of McCarver v. Nealey, (1 G. Greene (Iowa) 360) *"that an attorney has no right to receive any thing but money in satisfaction of a demand placed in his hands for collection,* unless especially authorized to do so by his client'," and cites with approval Kirk v. Glover, 5 Stew. and P. 340; Craig v. Ely, 5 Stew. and P. 354; and Gullett v. Lewis, 3 Stew. 23.

"This well-established rule of the general power and agency of an attorney to collect in money for his clients in and out of court, with and without judgment or other legal process, as declared and defined in the last cited authority, was approved in Robinson v. Murphy, 69 Ala. 543, 548, where Mr. Chief Justice Brickell declared: 'All who deal with an attorney or other agent must ascertain the extent of his authority. If they do not inquire, they can claim no protection because they indulged suppositions or conjectures, reasonable or unreasonable, that the agent had the authority he was exercising. Gullett v. Lewis, 3 Stew. 23. *The law defined the extent of the general power of the attorney, and is presumed to be known of all men, more than fifty years ago. In the case of Gullett v. Lewis, supra, the power of an attorney at law was defined, this court saying:* He 'is the special agent of his client, whose duties usually are confined to the vigilant prosecution or defense of the suitor's rights. *By virtue of his engagement as an attorney, he is not authorized to compromise the matter of controversy,* to execute a release of his client's demand, or even to release the respon-

sibility of a witness to his client, that he may be rendered competent.' *The compromise of which the court was speaking, was not an adjustment of pending litigation, but the composition of an admitted debt. The authority of this case has never been disputed, and it has been often cited with approbation, as defining accurately the general power of an attorney.*

West v. Ball, 12 Ala. 340; Chapman v. Cowles, 41 Ala. 103, 91 Am. Dec. 508. Whoever has dealt, or may in this State deal with an attorney, can have no right to rely on his exercise of any other power, unless it is specially conferred. Whether it has been specially conferred, they must, at their own peril, ascertain. *The acceptance by the attorney of a less sum than was due upon the judgment did not operate its satisfaction; and the transfer or assignment of the judgment was in excess of his authority!* See, also, Craft v. Standard Acc. Ins. Co., 220 Ala. 6, 123 So. 271; 66 A. L. R. 108, 112; Senn v. Joseph, 106 Ala. 454, 17 So. 543; Gunn v. Clendenin, 68 Ala. 294; Bush v. Bumgardner, 212 Ala. 456, 102 So. 629; McDonald v. State, 143 Ala. 101, 39 So. 257; White v. Ward, 157 Ala. 345, 47 So. 166, 18 L. R. A. (N. S.) 568; Section 10267, Code.

"*In the recent case of Boykin, Solicitor General v. Hopkins, et al. (Ga. Sup.) 162 S. E. 796, 799, 802,* the Georgia court overruled its case of Atlanta Title & Trust Co. v. Boykin, 172 Ga. 437, 157 S. E. 455, 458. In arriving at the conclusion that the applicant *sought to engage in the practice of law unlawfully, that court declared that acts constituting the practice of law are: To act as an attorney in fact for the settlement or adjustment of any and all claims; act as an attorney in fact for customers in procuring competent attorneys at law to represent such customers in any court or before any judicial body in this state in any contested or uncontested case or matter pending before such court or body, when an attorney at law is necessary; and furnish legal advice or legal services in connection with matters pertaining to the law.*

"The court said: 'We more readily reach this conclusion in view of the momentous importance of the question. Permitting corporations to practice law,

without any of the restraints imposed upon individuals, *who would not be licensed to practice law in or out of the courts* unless they possessed good moral character and the necessary legal learning, *will tend to commercialize, degrade, and prostitute the noble profession of the law.*' Boykin v. Hopkins (Ga. Sup.) 162 S. E. 796, 802. (Italics supplied).

"*The conclusion of that court that such acts of the proposed corporation would constitute the practice of law, speaking through Mr. Justice Hines as to 'what constitutes the practice of law in the absence of a statute,'* said:

* * *

Continuing, the Alabama Supreme Court said:

"(1) *It is unnecessary to observe, a fact of common knowledge, that it has been the usual business of a lawyer, for the past one hundred years in this state, as shown by the decisions we have cited, to engage in office practice not necessitating representation in court, as well as in cases needed in and about the collection and settlement of claims and demands.*

"(2) *The acts recited in the petition constituted the practicing of law as defined by the statutes relating to and defined in General Acts of 1931, p. 606. Such was the legislative intent, and is the construction placed by this court on the several statutes and the common law relating to and regulating the practice of law and the duty of an attorney to his client.*

* * *

"(3-6) *It is well established that the act in question (Gen. Acts 1931, p. 606) is a valid enactment under the police power, and offends neither state nor Federal Constitutions; is not usurpation of judicial power; does not deprive of liberty or property without due process; neither denies to citizens equal civil rights, nor grants special privileges and immunities; does not violate, impair, or deny rights retained by the people, and does not violate the Fourteenth Amendment to the Federal Constitution* (6 C. J. 569; McCaskell v. State, 53 Ala. 510; Brooks v. State, 88 Ala. 122, 6 So. 902 (Stone,

C. J.) ; In re Dorsey, 7 Port. 295, 388; Ex parte Wideman, 213 Ala. 170, 104 So. 440; Harris v. State ex rel. Wilson, Sol., 215 Ala. 56, 109 So. 291; Robinson v. State ex rel. James, 212 Ala. 459, 102 So. 693; Cummings v. State ex rel. Biggs, Solicitor, 214 Ala. 209, 106 So. 852) —*as applied to the facts of this case.*" (Emphasis supplied).

Under Proposition of Law II:

Constitution of Alabama of 1901, found in Code of Alabama 1940, Titles 1-6, Section 42, at page 88, reads as follows:

"DISTRIBUTION OF POWERS OF GOVERNMENT"

"Section 42. The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another."

Section 43 at page 91, reads as follows:

"Section 43. In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judical powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men."

Section 139 at page 164, reads as follows:

"JUDICIAL DEPARTMENT"

"Section 139. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, a supreme court, circuit courts, chancery courts,

courts of probate, such courts of law and equity inferior to the supreme court, and to consist of not more than five members, as the legislature from time to time may establish, and such persons as may be by law invested with powers of a judicial nature; but no court of general jurisdiction, at law or in equity, or both, shall hereafter be established in and for any one county having a population of less than twenty thousand, according to the next preceding federal census, and property assessed for taxation at a less valuation than three million five hundred thousand dollars."

Section 140 at page 166, reads as follows:

"Section 140. Except in cases otherwise directed in this constitution, the supreme court shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restriction and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law, except where jurisdiction over appeals is vested in some inferior court, and made final therein; provided, that the supreme court shall have power to issue writs of injunction, habeas corpus, quo warranto, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions."

Said the Supreme Court of Alabama in the case of *Berk v. State ex rel Thompson, supra:*

"(1) *It is unnecessary to observe, a fact of common knowledge, that it has been the usual business of a lawyer, for the past one hundred years in this state, as shown by the decisions we have cited, to engage in office practice not necessitating representation in court, as well as in cases needed in and about the collection and settlement of claims and demands.*

"(2) *The acts recited in the petition constituted the practicing of law as defined by the statutes relating to and defined in General Acts of 1931, p. 606. Such was the legislative intent, and is the construction placed by*

this court on the several statutes and the common law relating to and regulating the practice of law and the duty of an attorney to his client.

* * *

"(3-6) *It is well established that the act in question (Gen. Acts 1931, p. 606) is a valid enactment under the police power, and offends neither state nor Federal Constitutions.*" (Emphasis supplied). *(Pages 836, 837 of 142 Southern Reporter).*

The Court of Appeals of Louisiana in *Meunier v. Bernich, supra,* held as shown by headnote 10, as follows:

"10. Attorney and client Key 1,

Constitutional law Key 52:

"Clause excepting, from statute defining practice of law, layman's activities without resort to court proceedings, in enforcing, securing, settling, adjusting, or compromising *defaulted, controverted, or disputed* accounts or claims, *held unconstitutional as impingement upon inherent power of judiciacy and as violate of express constitutional grant of jurisdiction to Supreme Court in all disbarment cases, but remainder of statute was valid legislation in aid of Supreme Court's inherent power* (Act No. 202 of 1932, Sec. 2 (b) (3); Const. 1921, art. 2, Sec. 2; art. 7, Sec. 10)."

The Court in this connection said:

"We further hold that Act No. 202 of 1932, with the elimination of the above quoted clause, is valid legislation for we construe the statute as passed in aid of the Supreme Court's inherent judicial power." (Emphasis supplied). (Pages 568, 578 of 170 Southern Reporter).

The Supreme Court of Alabama in *Williams vs. Knight, supra,* all the Justices concurring, said:

"(5) *This court has the right to make rules in the*

exercise of its inherent power; and rules so made can be regulated or modified in a proper case by the Legislature where the inherent power of this court is not limited." (Emphasis supplied).

The Supreme Court of Alabama in the case of *Bessemer Bar Association vs. Fitzpatrick, supra,* said:

"(1) *Statutes providing a penalty for the practice of law without a license are cumulative and do not deprive the court of its inherent power to punish for unauthorized practice by contempt proceedings in such courts that have jurisdiction in the matter.* Clark v. Reardon, 231 Mo. App. 666, 104 S. W. (2d) 407."

* * *

"(4) We are of the opinion that *the circuit court has the inherent power* to duly regulate its officers, agents and agencies in the practice of law before that court and in other courts over which it has superior judicial power. We have indicated this in recent decisions. *This power exists aside from that contained in the statutes and our recent decisions defining what constitutes the practice of law. We adhere to the decision rendered in Berk v. State ex rel. Thompson, 225 Ala. 324, 142 So. 832, 84 A. L. R. 740, defining the practice of law in and out of court.*" (Emphasis supplied). *(Pages 735, 738 of 196 Southern Reporter).*

The Supreme Court of Alabama in *Ex parte Thompson, supra,* held as shown by headnotes 1, 5 and 9:

"1. Constitutional law Key 12.

"In determining constitutionality of statute governing disbarment of attorneys, the several provisions of Constitution must be construed as standing in pari materia (Const. 1901, Sects. 11, 42, 139)."

* * *

"5. Attorney and client Key 32.

"Legislature held to have acted within constitutional bounds in creating board of commissioners of state bar and conferring powers on it (Const. 1901, Sec. 139; Code 1923, Secs. 3318, 6220-6239, as amended by Gen. Acts 1931, pp. 284, 683)."

* * *

"9. Attorney and client Key 57.

"Supreme Court may adopt findings and conclusions of board of commissioners of state bar, may alter or modify them, and they may take any action agreeable to its judgment in matter of disbarment." (Page 229 of 152 Southern Reporter).

The Supreme Court of Nebraska in the case of *Re Integration of Nebraska State Bar Association,* held as shown by all of the headnotes, as follows:

"Attorneys, Secs. 2, 32—Courts, Sec. 7—rules for integration of state bar—authority to promulgate.

"1. This court, having the inherent power to define and regulate the practice of law, has authority, in the exercise of a sound judicial discretion, to promulgate rules providing for the integration of the bar of the state.

"Constitutional Law, Sec. 57—distribution of governmental powers and functions—regulation of practice of law.

"2. The Constitution of this state does not, by express grant, vest the power to define and regulate the practice of law in any of the three departments of government.

"Constitutional Law, Sec. 57—regulation of practice of law—which department to exercise.

"3. In the absence of an express grant of this power to any one of the three departments, it must, when the occasion demands, be exercised by the department to which it naturally belongs.

"Courts, Sec. 4—inherent powers of.

"4. The term 'inherent power of the judiciary' means that power which is essential to the existence, dignity, and functions of the court from the very fact that it is a court."

"Attorneys, Sec. 32—inherent powers of court over.

"5. The supreme court of this state has the inherent power to regulate the conduct and qualifications of attorneys as officers of the court.

"Constitutional Law, Sec. 62—Courts, Sec. 4—powers of—administration of justice—matters obstructing or embarrassing.

"6. The proper administration of justice is the main business of a court, and whatever obstructs or embarrasses its chief function must naturally be under its control.

"Constitutional Law, Sec. 62—scope of judicial powers—regulation of practice of law.

"7. The practice of law is so intimately connected and bound up with the exercise of judicial power in the administration of justice that the right to define and regulate its practice naturally and logically belongs to the judicial department of our state government." (Page 151 of 114 A. L. R.).

Of course, the Supreme Court of Alabama in its two decisions rendered in the case at bar—Wilkey et al v. State ex rel. Smith et al—as cited under Proposition of Law II, supra, has, in effect, ruled in harmony with the above quoted decisions, and within the purview of the quoted Sections of the Constitution of Alabama; and has, in effect, affirmed the correctness of Proposition of Law II, supra, viz:

"*The Supreme Court of Alabama*—the highest Court of the State—while in the exercise of the sovereign judicial power of the State under its Constitution, *has the inherent power to define and regulate the practice of law, both in and out of Court,* in said State; and which power may be aided, *but not impinged,* by a valid enactment of the Legislature under the 'police power'."

Petitioners erroneously insist that the Statute in question is to regulate the insurance adjustment business; whereas, it is an Act defining and regulating the practice of law, in which the insurance adjustment business is only an incident. Just here, the Petitioners approach the question at issue upon a false premise; and which makes the cases cited by Petitioners in Brief, as we will hereinafter point out, inapt on the question: Of the right of the Legislature of Alabama, in the exercise of its police power, to properly classify, upon reasonable basis, the independent business of Independent Insurance Adjusters—who are "Independent Contractors"—insofar as their business relates to acts constituting the practice of law!

The Supreme Court of Alabama in the case at bar has made this clear. We quote from paragraphs 7 and 9 in its opinion in this case, found on page 546 of 14 Southern Reporter, 2d Series, viz:

> " (7-9) *Subdivision (d)* of Section 42, Title 46, supra, *is not confined to insurance disputes but is broad enough to include them and should be so interpreted.* But as its language imports, it does not include the adjustment of insurance losses before there is a default, dispute or controversy. Before the situation reaches a point where there is a default, dispute or controversy, the law in our opinion provides for adjustments by independent lay adjusters, duly qualified and licensed as such, who may do whatever is necessary to that end *not prohibited by subdivisions (a), (b) and (c) of Section 42, Title 46, supra.* But after a default, dispute or controversy has arisen, the independent lay adjuster must step aside, for then the law declares that the further adjustment or litigation must be handled by a regularly licensed lawyer." (Emphasis supplied). Tr. of Rec. 225, 226.

Under Proposition of Law III:

This Proposition of Law reads as follows:

"As a 'Vocation,' Independent Insurance Adjusters, whether claimant adjusters or defense adjusters, are *'Independent Contractors,' and are not employees* 'in the ordi-

nary sense,' *nor are they 'in privity'* with either of the other parties, while settling legal claims or demands of or against insurance companies represented by them."

The Supreme Court of Alabama in the case of *Lynch Jewelry Co. v. Bass, supra,* held as shown by Headnote 1, as follows:

> "1. Master and servant Key 316 (1)—Collection agency *held to be independent contractor* for whose acts creditor was not liable.
>
> "Where creditor employed collection agency to collect purchase price of diamond ring, and servants of agency went to plaintiff and seized plaintiff's hands in an effort to take ring or to identify it *held collection agency was independent contractor in absence of special contract limiting its liability, for whose acts creditor was not liable.*"

Said the Supreme Court of Alabama in the case of *Collum Motor Co. v. Anderson, supra,* when dealing with a suit for damages for malicious prosecution of a garnishment, as follows:

> *"The Merchants' Credit Association was not the servant, agent, or employee, but an independent contractor, of defendant, for whose acts, as charged in this case, defendant was not responsible on the doctrine of respondeat superior.* Lynch Jewelry Co. v. Bass, 220 Ala. 96, 124 So. 222. Moreover, its liability in this form of action cannot under any circumstances be rested on such doctrine of respondeat superior, *but defendant must participate in the wrongful and malicious act, or ratify it with full knowledge, as we have shown.*" (Emphasis supplied). (Page 694 of 133 Southern Reporter).

Said the Supreme Court of Alabama in the case of *Milligan et al v. Alabama Fertilizer Co., supra,* as follows:

> "McCLELLAN, J. It appears to be well-settled law that, with respect to a claim placed in the hands of an attorney by a commercial agency such as that of R. G.

Dun & Co., for collection, the claim having been delivered to the agency by the creditor for the purpose of collection, the attorney is the agent of the collecting company, and not of the owner of the claim. Hoover v Wise, 91 U. S. 308; Bradstreet v. Everson, 72 Pa. St. 124; Lewis v. Peck, 10 Ala. 142; Stephens v. Badcock, 3 Barn. & Adol. 354. And it follows, of course, that, the attorney being thus the agent of the agent, *and not in privity with the principal,* the owner of the claim, cannot look to him for compensation of his services. Cleaves v. Stockwell, 33 Me. 341; Hill v. Morris, 15 Mo. App. 322." (Emphasis supplied). (Page 651 of 7 Southern Reporter).

The Supreme Court of Alabama, *on the first appeal in the case at bar,* held as shown by Headnote 4, as follows:

"4. Quo warranto Key 50 (1).

"In quo warranto proceedings charging respondents with practicing law without license, special plea of respondents that respondents were not employees of casualty and fire insurance companies 'in ordinary sense,' nor 'in privity' with such companies but were engaged in insurance adjustment business representing regular clientele, showed that their acts of settling claims for such companies constituted 'practice of law' prohibited by statute. Code 1923, Sec. 9932, par. 1; Gen. Acts 1931, p. 606.

"To be a 'privity' to another, a man must claim by or under that other, by blood, as heir, by representation, as executor, or by contract, as vendee, assignee, and the like." (Page 198 of 189 Southern Reporter).

Then, *on the last appeal in the case at bar,* the Supreme Court of Alabama held as shown by Headnote 3, as follows:

"3. Attorney and client Key 11.

"Independent insurance adjusters, who were paid on an hourly and mileage basis, were not 'employees' in the ordinary sense of insurance companies nor 'in privity' with such companies or liability carriers with-

in statute regulating the practice of law. Code 1940, Tit. 46, Sec. 42 (d)."

This headnote refers to the statement in the Court's opinion made *with reference to its holding on the first appeal,* as follows:

> "(3) We agree with the conclusion there reached that the appellants were not employees of the insurance companies which they represented 'in the ordinary sense' nor in privity with such companies and liability carriers." (Pages 536, 545 of 14 Southern Reporter, 2d Series). Tr. of Rec. 224.

There is a marked difference, *which is real, substantial, and not fanciful or artificial,* between the *nature of the business* of an "Independent Contractor" *as contrasted* with the *functioning* of an "employee in the ordinary sense," or one acting "in privity!" And, this difference and distinction are true, notwithstanding that the business activity of the one is similar to that engaged in by the other! *And, as such business activities relate to acts, which are properly declared to be the practice of law,* and, therefore, prohibited to be done by one not regularly licensed to practice law, the Legislature of a sovereign state is given the right, under the due exercise of its police power, to classify the "Independent Contractor" as one not entitled to engage in the act, *when constituting the practice of law!* The Independent Contractor's business is individual to himself in representing anyone and everyone, *whom he may "solicit"* or from whom he may otherwise acquire the right to represent that one about that one's own business, by contract express or implied; whereas, the business functioning of an "employee in the ordinary sense" is not at all about his own business, but is altogether about his master's business, and under the direct control and supervision of the master in the discharge of his duties under the employment; and the one "in privity" with another is still about his own business activities. With this reasonable differentiation kept in mind, when an Act defines and regulates the practice of law, it becomes easy and proper, then, to draw the line of demarcation, *as the Act in question does, when considering*

the publice welfare, between the right of an "employee in the ordinary sense" and one "in privity" to be permitted to do the act, which would otherwise be the practice of law as and when done by an "Independent Contractor," or by one as a "Vocation" for himself when representing the general public or anyone thereof in and about their dealings in business activities with third persons.

Under Proposition of Law IV:

The Supreme Court of Alabama, in the case at bar, held *on rehearing,* as shown by Headnotes, as follows:

> "27. Constitutional law Key 212.
>
> "The 'equal protection of the law' clause of the Fourteenth Amendment *does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wise scope of discretion in that regard and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.* U. S. C. A. Const. Amend. 14."
>
> "28. Constitutional law Key 211.
>
> "A classification having some reasonable basis does not offend against the 'equal protection of the law' clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. U. S. C. A. Const. Amend. 14."
>
> "29. Constitutional law Key 48.
>
> "When classification in a police law is called in question, if any state of facts can reasonably be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. U. S. C. A. Const. Amend. 14."
>
> "30. Constitutional law Key 48.
>
> "One who assails the classification in a police law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. U. S. C. A. Const. Amend. 14."

"31. Attorney and client Key 1, 11,

Constitutional law Key 238 (1):

"*Under the statute one who adjusts* a defaulted, controverted, or disputed account, claim, or demand *between persons with either of whom he is in privity or with whom he stands in the relation of employer and employee in the ordinary sense, is not engaged in 'practicing law,' and the statute so construed is not unconstitutional as depriving an independent insurance adjuster of 'equal protection of the laws.'* Code 1940, Tit. 46, Sec. 42 (d); U. S. C. A. Const. Amend. 14." (Emphasis supplied). (Page 538 of 14 Southern Reporter, 2d Series). Tr. of Rec. 230, 231.

The Supreme Court of Alabama, in the above-stated holdings, relies upon "the rules by which classification for the purpose of legislation must be tested," *as laid down by the Supreme Court of the United States in its opinion in the case of Lindsley vs. Natural Carbonic Gas Company, supra,* 220 U. S. 61, 31 S. Ct. 337, *55 L. ed. 369.*

The Supreme Court of Alabama, also, in support of its said holdings, by way of illustration, refers to the case of *Bryce vs. Gillespie, supra,* where it says:

"The Supreme Court of Appeals of Virginia in the case of *Bryce v. Gillespie, 160 Va. 137, 168 S. E. 653, applied these rules to a statute somewhat similar to the one here under consideration* and concluded that the act did not violate the equal protection clause of the 14th Amendment. *Though not committing ourselves to the soundness of the opinion of the Virginia court of the Bryce case in its entirety,* yet we refer thereto as concurring in the reasoning there employed upon the matter of discrimination. *In that view of the matter subdivision (d) of Sec. 42, Title 46, supra, is not unconstitutional as denying to the independent insurance adjuster equal protection of the laws guaranteed to him by the 14th Amendment to the Constitution of the United States.*

"*Application for rehearing overruled.*

"All the Justices concur." (Emphasis supplied). (Page 549 of 14 Southern Reporter, 2d Series). Tr. of Rec. 231.

We quote Headnote 2 in the case of *Bryce vs. Gillespie*, above referred to, from the Supreme Court of Appeals of Virginia:

"2. Attorney and client Key 1,

Constitutional law Key 238 (1):

"Act prohibiting persons, firms, or corporations, except attorneys at law, from representing another's claim in court, *unless having property interest in cause, with certain exceptions,* held not invalid as based on arbitrary and unreasonable classification (Acts 1924, c. 415; Const. Va. Secs. 1, 11; Const. U. S. Amend. 14).

"Acts 1924, c. 415, provides that, except duly licensed attorneys, no person, firm, or corporation, having no property interest in matter in controversy, shall represent another in any court; that no person, firm, or corporation shall assign to another any claim, or any interest therein, for the purpose of having such assignee represent the claim in any court; and that no person, firm, or corporation shall accept an assignment of any claim, of representing such claim in court. The act further provides *that any person, firm, or corporation may be represented by any employee who is engaged regularly on a salary basis,* and that any real estate agent may represent the landlord in claims for rent on property regularly listed with him." (Emphasis supplied). (Page 653 of 168 Southeastern Reporter).

Said that Court in its opinion, among other things, as follows:

"The attack on the constitutionality of the act is concentrated *on the distinction, or classification, which is made between an employer who pays his employee a salary and one who pays another commissions for*

services performed. In other words, it is claimed that there are two favored classes, i.e., an employer who pays an employee on a salary basis, and the employee thus paid: and two classes which are discriminated against, i.e., the employer who pays his employee a commission, or on a piece basis, and the employee so paid.

"The distinctions are more hypothetical than practical. All persons, whether employer or employee, have the same right to appear in any of the courts in their own behalf. The employer who pays his employee a salary has, *to a large extent, control of his activities, and* (Page 654) *may designate what duties he is to perform. Such employer has purchased the time of his employee during the hours of employment, and has a right, within limitations, to dispose of that time as he sees fit. An employer who pays a commission for services performed usually has no control over the time of such employee, or the hours of his employment.*

"If a traveling salesman is paid a commission on the sale of merchandise, or other commodity, *he has a property interest in all accounts due for the articles sold by him, and hence he has the same right to appear* before the courts to enforce the collection of such accounts *as any other interested party. Where different parties have a property right in the subject-matter of litigation, the act does not forbid any one of such parties from representing any or all other interested parties.*

"An employer who pays an employee by the piece has no legal right to control the time of such employee, except when working on the particular article for which he has agreed to pay him.

* * *

"No person has a legal right to control the time of another or direct how his time shall be used, unless he agrees, directly or indirectly, to pay the other therefor. *The statute provides that an employer who regularly pays for the use of another's time may be represented in the courts by such person for whose time he has paid, but that all other represeniations (with the ex-*

ception noted) in the courts of this commonwealth shall be by duly licensed and qualified attorneys.

* * *

"The right of a party to appear in his own behalf and he heard in the courts is fundamental. It is an inalienable right common to all, guaranteed both by the Constitution of the state and the Constitution of the United States. *The right to have some one else appear and speak for one, or the right of such other to appear in the courts as a representative of a litigant, is not an inalienable right. To represent another in the courts is not a right, but a privilege, to be granted and regulated by law for the protection of the public.*

"The act denies to no person, firm, or corporation the right to institute and conduct litigation by which said parties are personally affected or in which they have a property interest; it denies to no person, firm, or corporation the right to be represented by an employee regularly engaged and paid a salary;"

* * *

"no person, firm, or corporation is permitted to be represented before the courts by an employee temporarily engaged, whether such employee is paid a salary or otherwise. (Page 655).

"(1) It is a matter of common knowledge that in recent years there has developed a form of business designated collection agencies. *The tendency of some of these agencies is to engage in the practice of law.* That is, they not only advise creditors and claimants of their legal right, but frequently, especially in the inferior courts, appear for them. *The ethics of the legal profession prevent its members from soliciting business. There is no such restraint upon these collection agencies. On the contrary, they actively solicit claims for collection,* and numerous claims of doubtful value, stale demands, and debts barred by the statute of limitation are thus obtained by them. The owners have so little faith in the merits of these demands that they are unwilling to employ an attorney to institute action or to spend any of their own time or that of their paid employees to present these demands before the civil

justice, or other court. *Some of these collection agencies are willing to take a gambling chance, and institute and conduct proceedings thereon. Thus frequently litigations with little or no merit are instituted. The dockets of the courts are crowded with these stale demands, the time of the courts is unnecessarily expended thereon, and people of limited means who can little afford the expense of a lawsuit are unnecessarily harassed.*

"(2) No reasonable objection can be made to honest collection agencies which operate within legitimate bounds, but such agencies are usually composed of laymen who are not qualified to give legal advice or to conduct litigation in any of the courts. *The regulations in question were intended to confine the institution and conducting of litigation in the courts of record to interested parties, or skilled advocates for them, and to confine the institution and conducting of litigation in the inferior courts to interested parties or their regular agents, whose time and activities they have a legal right to control. By this act, the Legislature has to a large extent removed inducements for outside parties to stir up litigation. While in actual practice the regulations may in some instances result in hardship or inequality, we cannot say that they are arbitrary, or that the classification does not rest upon a reasonable basis.* (Emphasis supplied). (Page 656 of 168 Southeastern Reporter).

The Supreme Court of the United States in the case of *Stuart Lindsley vs. Natural Carbonic Gas Co. et al. supra,* held as shown by Headnotes 1, 2 and 3, *(Pages 369, 370 of 55 L. ed.),* as follows:

"Federal Courts—following decisions of state courts—Construction of statute.

"1. The construction placed by the highest court of the state upon N. Y. Laws 1908, Chap. 429, enacted to safeguard natural mineral springs against waste and impairment, must be accepted by the Federal Courts

in determining the validity of such statute under the Federal Constitution.

"Constitutional law—due process of law—prohibiting waste of mineral waters.

"2. A landowner engaged in collecting and vending as a separate commodity the carbonic acid gas contained in natural mineral waters existing in a common underground reservoir is not deprived of his property without due process of law, contrary to U. S. Const., 14th Amend., by the provisions of N. Y. Laws 1908, Chap. 429, which, as construed by the state courts, forbid him from pumping or otherwise artificially drawing, by means of wells on his property, unnatural quantities of such waters from the common source of supply, and wasting them to the injury or impairment of the rights of other proprietors.

"Constitutional law—*equal protection of the laws—Classification—prohibiting waste of mineral waters.*

"3. *The substantial difference in point of harmful result, which, so far as the case as made shows, may exist, affords a reasonable basis, under the equal-protection-of-the-laws clause of the Federal Constitution, for the exemption of pumping from wells not penetrating* the rock, and such pumping as is done for other purposes than collecting and vending, as a separate commodity, the carbonic acid gas contained in mineral waters, *from the operation of the provisions of N. Y. Laws 1908,* Chap. 429, *prohibiting the pumping or artificially drawing of unnatural quantities of mineral waters from a common underground source of supply, and wasting them to the injury and impairment of other proprietors.* (Emphasis supplied).

The Court's unanimous opinion, through Mr. Justice Van Devanter, decided March 13, 1911, among other things, says:

"In terms the bill (to enjoin the enforcement of a state statute) predicates the right to the relief sought *upon the claim that the state statute deprives the appellant and others* of property without due process of law, and denies to them the equal protection of the

laws, and therefore is violative of the 14th Amendment to the Constitution of the United States." (Emphasis supplied). (Page 371 of 55 L. ed.).

The Court in its opinion quoted as follows from its prior decision in a similar case, dealing with "gas and oil" in a commingled form in an underground common reservoir beneath the lands of many owners, of *Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L. ed. 729, 20 Sup. Ct. Rep. 576,* viz:

> " 'Viewed, then, as a statute to protect or to prevent the waste of the common property of the surface owners, the law * * * which is here attacked because it is asserted that it divested private property without due compensation, *in substance is a statute protecting private property, and preventing it from being taken by one of the common owners without regard to the enjoyment of the others.* * * * These contentions but state in a different form the matters already disposed of. *They really go not to the power to make the regulations, but to their wisdom. But with the lawful discretion of the legislature of the state, we may not interfere'.*" (Page 376 of 55 L. ed.).

The Court then concluded its opinion in the said *Lindsley Case,* as follows:

> "What we have said upon the subject of classification sufficiently answers the suggestion or claim that, by reason of the presumption, the statute discriminates invidiously between different persons in substantially the same situation.
>
> "For these reasons none of the objections urged against the statute can be sustained, and so the decree dismissing the bill is affirmed." (Page 379 of 55 L. ed.).

The *right to practice law is a franchise* granted by the sovereign state, *and which cannot be acquired by usage or user,* or by the duration of a Statute of Limitation or by prescription; *because such unlawful exercise of a franchise*

is a "continuous usurpation!" (See: *In Re Tracy, 266 N. W. 88, (Minn. Supreme Court 1936); People v. Stanford, 77 Calif., 360, 18 Pac. 85.*

So, since lawyers, under rules of ethics or law, may be disbarred, if they solicit legal business, the Statute, as construed prohibiting Independent Insurance Adjusters, *after a dispute has arisen,* in adjusting a "defaulted, controverted or disputed" legal claim or demand, from further dealing with it to an attempted conclusion, while permitting "employees in the ordinary sense" of an insurance company to continue through a conclusion of the matter—*under the decisions of the Supreme Court of the United States noted in the Lindsley vs. Natural Carbonic Gas Company case, supra—would prevent the Independent Insurance Adjuster in his "vocation" from taking advantage of the common business with lawyers* "without regard to the enjoyment thereof by the lawyers *after the matter had reached the stage of practicing law,"* and who would otherwise be deprived of such common business, *when it reached the point of being the practice of law* to deal with it further, *by reason of its having been solicited by the Independent Insurance Adjuster before it had become the practice of law business* to further deal with it; *and for the public welfare,* it would prevent the Independent Insurance Adjuster layman from engaging in the practice of law, until first duly licensed so to do.

Said the Supreme Court of Alabama in the case at bar (Page 546 of 14 Southern Reporter, 2d Series), as follows:

> "When a dispute arises, it may take a wide range in the realm of the law and be governed by legal principles of a general sort, or it may be easily solved. And so may any disputed controversy. *But the law cannot separate and classify those which are disputed, controverted or defaulted into classes, some of which require the legal learning of a lawyer and some do not."*

(Emphasis supplied). Tr. of Rec. 226.

Wherefore, as a matter of argument, we repeat the statement of Proposition of Law IV, supra, viz:

"*The Statute of Alabama*—entitled: 'An Act to further regulate the practice of law; providing who may practice

law; defining the practice of law; requiring a license for practicing law; and providing penalties for violations of the Act.' (*Gen. Acts Ala. 1931, p. 606;* Codified in *Code Ala. 1940, Tit. 46, Section 42*)—as construed by the Supreme Court of Alabama *in the case at bar favorably* as to *'an employee in the ordinary sense,"* as against a *'Vocation'* of *'an Independent Insurance Adjuster,'* with respect to being engaged or not in *'practicing law'* within its provisions, *is a valid 'police law'* of said State *in aid of the Supreme Court:* and does not offend or violate the 14th Amendment to the Federal Constitution as depriving the 'Independent Insurance Adjuster' of 'equal protection of the laws,' or 'due process.'

"Because: as applied to the *'Vocation'* of the Petitioners as Independent Insurance Adjusters, viz: *'Independent Contractor,'* contrasted with *'employees in the ordinary sense'* of insurance company functioning within the purview of the Act, *defining and regulating the practice of law for the public welfare: 'the substantial difference in point of harmful result,* so far as the case as *made shown, may exist*—(when *'as soon as a controversy or dispute arises or a default occurs—any sort of controversy or dispute')—affords a reasonable basis, under the equal protection-of-the-laws clause of the Federal Constitution for exemption'* of the activity of the *'employee in the ordinary sense'* 'from the operation of the provisions' of the Legislative Act."

* * *

"(a) *The Petitioners* in their Brief, in the case at bar, *cite no authorities holding contrary to the foregoing proposition of law!"*

The following cases cited by Petitioners in Brief, in the case at bar, are without application to the case at bar and, therefore, are inapt!

We now discuss each of them in the order in which Petitioners refer to them in Brief:

First, on pages 57-59 of Petitioners' Brief is reference made to the case of *Hartford Steam Boiler Inspection and Insurance Company v. Harrison, 301 U. S. 459, 57 S. Ct. 838.* That case *deals with regulating* in the State of Georgia *insurance business merely, which is not a franchise as is the right to practice law;* and in the regulation of the com-

mon business permitted insurance companies to do, the court finds: That the Statute discriminates, without justice or fair reason, against one class to the advantage of the other class of insurance companies.

Said the Court:

> " 'We can discover no reasonable basis for permitting mutual insurance companies to act through salared resident employees and exclude stock companies from the same privilege'."

(See: The end of the quotation from the case appearing on page 59 of Petitioners' Brief).

Second, on pages 59 and 60 of Petitioners' Brief is reference made to the case of *State of Oklahoma ex rel Short v. Reidell, 109 Okla. 35; 233 Pac. 684; 42 A. L. R. 765.* That case deals with a Statute of the State of Oklahoma requiring all professional Accountants to become certified, according to the examination requirements under the Act, before engaging in the business, which the *Supreme Court of Oklahoma* says is the first and only such Statute of complete prohibition as to Public Accountants found within the United States; and says the Supreme Court of Oklahoma: *"The Defendants are not engaged in the exercise of a franchise, but a constitutionally guaranteed right."* (See: The end of the quotation from the case appearing on page 60 of Petitioners' Brief).

The Supreme Court of Oklahoma concedes, that the question involved was different to the right of a sovereign state to regulate the practice of law, which is a franchise right, and as the Supreme Court of Alabama had pointed out in the *Lehmann v. State Board of Public Accountancy, 208 Ala. 185, 94 So. 94, from which Alabama case the Suprame Court of Oklahoma quotes* in its opinion. We quote from the Oklahoma Supreme Court opinion on this subject:

> "As to the defendants' first contention, we deem it unnecessary to say more than that, after a careful consideration of the act as a whole, we think it was clearly the legislative intent to prohibit any one engaging in

the practice of the profession of accountancy who has not stood the examination and received the certificate as provided by that act.

"It is agreed by counsel that every state in the Union has a law regulating accountancy similar to the law of this state, with the exception that, at the time this action was commenced, no other state had attempted to prohibit the practice of the profession by those not certified.

"The validity of the statutes regulating accountancy has been upheld as being within the police power of the state by the courts of Alabama, Louisiana, New York and Texas. In all of the cases holding the act within the police power of the state, where its validity was questioned, the courts have particularly pointed out that the regulations did not prohibit one not holding the certificate to practice the profession of accountancy.

"*In Lehmann v. State Board of Public Accountancy, 208 Ala. 185, 94 So. 94, where the state board* of accountancy sought to cancel a certificate issued to one of its members, where it was held that the act was within the police power of the state and valid, the court said: '*The rights of complainant in this case are unlike the rights of a physician, surgeon, dentist, lawyer, or school teacher to practice their callings or professions.* Under the law, they cannot practice without a certificate or license; and, when their license or certificate is revoked, they are thereby prevented from practicing their profession at all. In the case of accountants, however, this is not true. They are not required to obtain a certificate or license to practice their calling, but obtaining the license or certificate is purely voluntary on their part. Nor does the revocation or cancellation of the license or certificate, when once issued, bar or deprive them from further or longer practicing their chosen calling. The license in their case is but a certificate of the board issuing it as to their competency and fitness. It is not at all a requisite to the practice of their calling, though it may be true, and doubtless is, that the certificate or license, being an authoritative recommendation or certification of a legally con-

stituted board as to efficiency and qualifications, has some value'." (Emphasis supplied). (Pages 768 and 769 of 42 A. L. R.).

Third, on page 61 of Petitioners' Brief is reference made to and quotation set forth from the opinion in the case of *Allgeyer vs. State of Louisiana, 165 U. S. 590, 41 L. ed. 832.* The opinion in that case, in dealing with the constitutional right of a citizen of one state to contract for insurance protection under contract made with an insurance company of and in another state, but not authorized to do business in the state where that citizen resided, had occasion to set forth a quotation from the opinion of Mr. Justice Bradley in another case dealing with "the right to follow any of the ordinary callings of life" as guaranteed by the Federal Constitution. *That case does not deal with a franchise regulation, such as is the right to practice law and as is involved in the case at bar!*

Fourth, on page 63 of Petitioners' Brief is reference made to the case: *New State Ice Co. vs. Liebman, 285 U. S. 262, 52 S. Ct. 371.* That case deals with "the common right to engage in a lawful private business, such as the manufacture and sale of ice." *That case does not deal with a franchise regulation, such as is the right to practice law and as is involved in the case at bar!*

POINT B

Subdivision (d) of Section 42, Title 46, Code of Alabama of 1940, as construed by the Supreme Court of Alabama, recognizing that the adjustment of "defaulted, controverted, or disputed" claims is a legitimate *functioning* in which an "employee in the ordinary sense" may engage, without being licensed to practice law, but denies that right to an "Independent Insurance Adjuster"—as an Independent Contractor—whether paid by the hour or by the piece work, *does not* deprive Petitioners and other "Independent Insurance Adjusters"—as Independent Contractors—of liberty and property without due process of law.

We respectfully submit, that the foregoing part of this our Brief, and with the authorities cited supporting the same, suffices to maintain the correctness of this point!

The Alabama Statute defining, regulating and licensing the practice of law, and as construed by the Supreme Court of Alabama in the case at bar, prohibits a "Vocation" of an "Independent Contractor" in the settlement and adjustment of "defaulted, controverted or disputed" accounts, claims or demands for or against third persons, unless that "Vocation" be engaged in by an "Individual Person" duly licensed to practice law, *since such activity constitutes the practice of law;* and *it makes no difference whether that "Independent Contractor" be retained on a salary or paid by the hour, or by the piece work!*

Petitioners in Brief, on page 63 say: "We urge that the State has no right to destroy the well-recognized vocation of Independent Insurance Adjuster."

The Supreme Court of Alabama in construing the Act defining and regulating the practice of law, as said, *has not* permitted the destruction of the "alleged" well-recognized vocation of the "Independent Insurance Adjuster!" It has, merely, properly regulated it, *as an incident to the State's right to define and regulate the practice of law for the public welfare;* and has thereby properly required the "Independent Insurance Adjuster"—as an Independent Contractor—*"to operate within legitimate bounds,"* and *not be allowed to practice law unlawfully!*

Pertinent to this statement, we quote from the Supreme Court of Appeals of Virginia in *Bryce vs. Gillespie, supra,* on page 656 of 168 S. E. Reporter: *"No reasonable objection can be made to honest collection agencies which operate within legitimate bounds. * * * The tendency of some of these agencies is to engage in the practice of law."*

Wherefore, we most respectfully submit, that this case at bar does not involve vital rights of Petitioners calling for the Writ of Certiorari; but that all vital rights of the Petitioners have been safeguarded and protected by the Statute of Alabama and its Supreme Court's construction thereof, in defining and regulating the practice of law, *which is a franchise right!*

No rights of the Petitioners guaranteed by the United States Constitution have been denied thereby; and for that reason, the Petition in the case at bar, for the Writ of Certiorari to the Supreme Court of Alabama, we most respect-

fully submit, is not entitled to be allowed; and that, in no event, should the Writ of Certiorari be granted by this Honorable Court, as prayed for by the Petitioners!

Most respectfully submitted,

William Marvin Woodall

WILLIAM MARVIN WOODALL,

Francis H. Hare

FRANCIS H. HARE,
Counsel for Respondents.

Post Office Address of Counsel for Respondents:
Mr. Woodall: 702 First National Building,
Mr. Hare: 1207 Comer Building,
Birmingham, Alabama.

STATE OF ALABAMA
JEFFERSON COUNTY

This is to certify, that I have served a copy of the foregoing OPPOSING BRIEF upon Honorable James A. Simpson, Counsel for Petitioners, at his office in the City of Birmingham, Alabama, on this the 26 day of October, 1943.

William Marvin Woodall

WILLIAM MARVIN WOODALL,
Of Counsel for Respondents.

Subscribed and sworn to before me, and given under my hand and official seal this the 26 day of October, 1943.

Jennye Van Leuven

Notary Public.

No. 400

IN THE

Supreme Court of the United States

OCTOBER TERM 1943. No. 400.

J. L. WILKEY, *et al.*,
Petitioners,

vs.

STATE OF ALABAMA, *et al.*,
Respondents.

PETITION FOR PERMISSION TO FILE A BRIEF *AMICUS CURIAE.*

To the Honorable the Justices of the Supreme Court of the United States:

CONOVER ENGLISH, a member of the Bar of this Court, comes and shows the Court the following facts:

1. The petitioners are BENJAMIN P. BURMAN and VINCENT SCULLY, partners in trade as STANDARD CLAIMS ADJUSTMENT SERVICE. Petitioners operate and carry on their business as what is known in insurance circles as independent adjusters. Petitioners are laymen, and are not members of the Bar of any State.

2. Petitioners act as independent adjusters for various insurance companies having offices in and carrying on business in the State of New Jersey. As such independent

adjusters petitioners investigate, adjust and settle claims of various kinds which are made against the various insurance companies for which they act. Petitioners are not paid a fixed salary by any of the said insurance companies, but are otherwise compensated for their services.

3. Petitioners are of the opinion that the decision of the Supreme Court of Alabama, as reported in 14 Southern Reporter (2d) 536, will materially interfere with their business, which they believe to be a legitimate business, and is in contravention of their rights under the Constitution of the United States, and particularly the Fourteenth Amendment thereof, and petitioners desire to file a brief as *amicus curiae* in this matter with this Court.

4. Petitioners are advised by James A. Simpson, Esquire, counsel for J. L. Wilkey and J. L. Wilkey Adjuster, Inc., the petitioners in the above entitled suit, that his permission has been obtained for such filing, but that counsel for the respondents in the above entitled suit, although requested so to do, have refused to grant such permission.

WHEREFORE, petitioners respectfully request this Court for leave to file such brief as *amicus curiae* on the petition of the petitioners in the above entitled suit for the granting of a writ of certiorari.

Respectfully submitted,

CONOVER ENGLISH.

Dated November 9, 1943.

I HEREBY CERTIFY that a copy of the foregoing Petition was mailed to Marvin Woodall, Esq., attorney for respondents, by airmail special delivery this November 9, 1943.

CONOVER ENGLISH.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton Street, Newark, N. J.
(5585)